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PROTEST

OF THE

FREE SPEECH LEAGUE, New York

AGAINST THE PASSAGE OF

SENATE BILL, No. 1790
ASSEMBLY BILL, No. 650

NEW YORK LEGISLATURE, 1911

WHICH PROPOSES TO PENALIZE CERTAIN
MEDICAL ADVERTISING AND INTELLIGENCE

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FREE SPEECH LEAGUE

TEMPORARY ADDRESS

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TO THE HONORABLE GOVERNOR AND MEMBERS OF LEGISLATURE OF THE STATE OF NEW YORK :

ARGUMENT AND PROTEST AGAINST

SENATE BILL No. 1790

ASSEMBLY BILL No. 650.

Penalizing Certain Medical Advertising and Intelligence.

Not having obtained an opportunity for opposing these bills before the committees having them in charge, I avail myself of this method of presenting to the Legislature some consideration why these proposed laws SHOULD NOT BE ENACTED.

THE PURPOSE OF THIS BILL:

The avowed purpose of this legislation is to prohibit everything imparting information as to how, where, or by whom venereal diseases can be treated, cured, or advice concerning the same be had.

A proviso at the end of the bill uses this language:

“Provided however that this section shall not be construed to apply to didactic or scientific treatises on sex conditions, disease, or infirmities which do not advertise *or call attention to* any person or persons who will treat or advise concerning the same, nor to any office or place where the same may be treated or where advice will be given concerning the same.”

Because in this bill the portion which prescribes the criteria of guilt fails to include the standards which will determine the legal distinction between an advertisement of sex cures and a scientific or didactic discussion of them, it should be considered unconstitutional.¹

Conscious of this uncertainty, the author of this bill added the proviso just quoted, and thus, if the bill should become a

¹See: Due Process of Law in Relation to Statutory Uncertainty and Construction Offenses; published by the Free Speech League; also Obscene Literature and Constitutional Law, chapters 18 to 22, both in N. Y. State Library.

law, the proviso might encourage judges, by judicial legislation, to penalize all scientific and didactic discussions of the treatment of sexual disorders, if the address, or even the name of the author, is attached. Especially would this be likely if the accused person had made himself disagreeable by repudiating those rules of medical societies which are miscalled professional "ethics."

It is to be observed that this is not a proposition to punish false or fraudulent statements concerning such diseases, their treatment or cure; it is avowedly aimed at all publicity in such matters, not excepting truthful, accurate scientific information imparted by physicians, if these attach their name or address to the same.

THE MOTIVES:

The modern psychologist esteems the reasons which people assign for their conduct as being but a justification, or explanation, of their predispositions, otherwise acquired, and often a method by which the real motives are concealed. In this aspect it becomes important always to inquire whence come those predispositions, which the advocates of any measure may be concealing? Is it determined by an impersonal judgment, founded upon observations of the facts of nature, or is it the product of mere unreasoned emotional aversions or attractions which perhaps are mere symptoms of nervous disorder or emotional perversion? Let us apply these considerations to the bill in question and see if we can find an explanation for it other than those which are urged, and later let us make inquiry as to the sufficiency or apparent untruth of the reasons given for this bill.

IS IT TO PREVENT FRAUD?

In a former legislature (and doubtless now), it was claimed that this legislation is necessary to prevent fraudulent representation about venereal diseases, and it is claimed that such are being made by quacks, or alleged quacks, outside the medical trusts, for the purpose of taking away the latter's patients and their money. This contention is manifestly a false pretense, because statutes already existing are ample for the punishing of every fraudulent representation, whether by mail, or other methods within the State.

IS IT TO PREVENT INDECENCY?

The claim has also been made that this legislation is necessary for the suppression of all such sexual literature because

it is offensive to decency, and "purity." This is also manifestly a false pretense, because Federal and State statutes already penalize "obscene," "indecent," "filthy" and "disgusting" prints. We are therefore compelled to look elsewhere for the REAL MOTIVES which prompted the demand for this legislation.

ONE OF THE REAL MOTIVES

I suspect that one of the real motives for this legislation is to be found in the strange mental operations of certain moral perverts whose opinions on such matters appear to be determined by an insane over-valuation of the iniquity of the mere thought of sex and the stupid assumption on their part that if prints of this sort can be kept from the sight of people that nothing will exist either in their social environment or their own physiological mechanism to suggest such thoughts. This form of mental aberration is illustrated by the following quotation from a physician, whom I find it difficult to credit with sanity, but who wrote the following:

"You cannot teach purity to any living brain without contrasting it with impurity, and to create certain indistinct, gauzy, undefined pictures of contours or unmentionables in a young person's brain is far worse and seductive than is the placing of the originals—in all their abhorrent, disgusting, clammy physical details—before their blood and flesh eyes and reach.⁸ I would a thousand times prefer to attend my own daughter's funeral than to know that the school-teacher or anybody was teaching her the how and wherefore of her playmates' organic differentiation."* * * *

It is my firm belief that this kind of moral sentimentalizing is founded upon diseased nerves and unhealthy disturbances, or perversion of those feelings which have their origin in the sex-nerve centers. It is an outrage to abolish our guarantee of freedom of the Press, and to make ignorance compulsory, at the behest of those few who are thus afflicted.

ANOTHER OF THE REAL MOTIVES

Another manifestation of the kind of moral perversion which could induce an indorsement of this bill, is found in the following statement, copied from the *Woman's National Daily* and credited to "Dr. Lyman B. Sperry, a widely known author and lecturer." Dr. Sperry is the author of some sex books published by religious societies and he is lecturer upon

(⁸ Autology, by Dr. Edward R. Moras, pp. 187-188.)

sex matters before church organizations. He is said to have commented upon Dr. Ehrlich's new discovery for the cure of syphilis by the use of Salvarsan (or 606, as it has been referred to in popular prints). Dr. Sperry is reported to have said:

"If such a chemical has been discovered, and I don't believe it, it will be the greatest curse mankind has been given since Adam and Eve were driven from the Garden of Eden. If such a cure has been discovered it will have a very harmful effect on all mankind, as it will be the means of more loose living than is now prevalent. I hate to think of the moral influence it will have."

Here then we have the strange logic which ought to make it a duty to penalize the cure of dyspepsia or delirium tremens, because such cures tend to make gluttony safe. Is our constitutional guarantee of Freedom of the Press to be ignored at the behest of such lunacy?

Commenting upon the statement of Dr. Sperry, Dr. William J. Robinson says: "If this be so, then do not those pious humbugs see that every other physician who is treating venereal disease is a criminal against our morals? If it is wrong to discover a remedy which will cure syphilis in a week, then it is wrong to cure syphilis in a year or three years. We should refuse to treat venereal disease at all! Let the wretches, who are the victims of their own debauchery and immorality, suffer forever! By curing them, by perfecting our methods of treatment, we encourage immorality. The wretched sinner knows that if he gets a disease he will go to a specialist, who in the space of a few weeks or a few months will cure him. But if he knew that no doctor would want to treat him, when once he got a loathsome disease he would have to keep it to the end of his days, he would keep away from vicious indulgence in illicit intercourse. Isn't our logic perfect? Yes, the more we think of it, the more convinced we are that all search for effective anti-venereal remedies, all treatment of venereal disease, is immoral. Yes, we are going to give up our present specialty and we are going to plead with our genito-urinary surgeons and syphilologists to cease treating venereal patients, because by doing so they contribute indirectly, but none the less positively, to the spread of immorality. And should we fail by moral suasion to make them give up their nefarious work, we shall introduce a bill making the treatment of venereal disease a felony, punishable by twenty years at hard labor. And we would urge the

judges to show no mercy to venereal specialists even of the highest standing, nor to druggists or manufacturers who traffic in anti-venereal drugs.

"Our morals must be safeguarded at all hazards. Fiat virtue, pereat cœlum."³ What was thus said sarcastically is about to become a fact.

THE MOTIVES OF THE MEDICAL TRUST

There is another reason for the enactment of such a law which is found in the "ethics" of the *doctors' trade union*. On the whole, I approve of trades unions, but certainly this is the most pernicious and has the least excuse for its existence. The medical societies are anxious to put out of business the "scabs" of their profession, who do not observe trade-union rules, nor pay dues to the union.

A QUESTION OF SINCERITY.

When this same bill was before the legislature a year ago, it had the indorsement of numerous prominent physicians, some of whom are the authors of medical books treating upon sexual subjects, and others were connected with hospitals. All, I believe, were members of the medical Trust and I assume this bill now has their indorsement. Some hospitals in their reports state how many cases of venereal disease they have treated or cured. By attaching their names or addresses to these reports they impart information as to where such diseases will be treated. Doctors connected with such hospitals, if they indorse this bill, are, therefore, proposing to penalize their own conduct. I humbly beg leave to question their honesty and good faith in indorsing this bill. Others issue medical books on syphilis and other social diseases and articles in medical journals and reprints of these, in which they proclaim their ability to advise concerning and to treat such diseases, and to these publications they attach their names and addresses and in them they discuss methods of treatment and cure. Do they honestly propose to make themselves criminals for continuing the circulation of these publications? Again I am reluctantly compelled to doubt their honesty. They propose to penalize such conduct as they themselves have been guilty of, but they do not intend to have a uniform enforcement of this law. Long ago the Supreme Court of the United States said: "It would certainly be dangerous if

(³ See Critic and Guide, March, 1911, pp. 78-79.)

the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who shall be set at large.”⁴ This bill proposes even a more dangerous thing. It will penalize all physicians writing about the treatment of sexual disease who attach their names and addresses and the members of the medical trust and their privately employed spies, and provocateurs, will decide against whom this law shall be enforced and as to whom it shall be a dead letter. Furthermore, under an infamous law still in force the medical trust in N. Y. County will get part of the fines which are collected from those whom its hired spies convict. No! I cannot believe in either the honesty of purpose, or the public spirit, of either the quack-moralists or of the political trade-unionists of the medical trust.

THE MORALITY OF ADVERTISING

My contention is that WHATEVER MAY BE LEGITIMATELY DONE MAY BE LEGITIMATELY ADVERTISED. UNTIL YOU PENALIZE THE TREATMENT AND CURE OF THE VENEREAL DISEASE YOU SHOULD NOT PENALIZE ADVERTISING WHICH ANNOUNCES WHERE OR BY WHOM SUCH LAWFUL CURES OR TREATMENTS CAN BE HAD. I recognize fully the right of the medical trade-union to make any rules it may see fit for its own members, and I even recognize their right to miscall these trade-union rules “professional ethics.” However, I insist that it is not within the legitimate province of the legislature to place in the penal code any of the medical trust’s “ethics,” created for promoting the financial interests of its members. Doubtless this is only the initial step. The end sought is to penalize all medical advertising, because all advertising equally violates the miscalled “ethics” of the medical trade-union. Ultimately all medical intelligence imparted to laymen will be penalized, as that also violates the “ethics” and financial interests of the medical priesthood.

THE EVILS OF THIS TABOO, OF QUACK-MORALISTS AND THE MEDICAL PRIESTHOOD

I wish now to point out briefly some of the appalling results which have come from moral sentimentalism and that “ethical” snobbery which induces most of the hospitals and

⁴(U. S. vs. Reese, 92, U. S. 210-221.)

many physicians to refuse to treat venereal disease. Upon this showing I claim that the legislature, instead of penalizing advertisements which announce the possible cure of such diseases, should enact laws encouraging dissemination of such information, which states where or by whom advice and treatment will be given. Indeed, it seems to me that if any legislation upon this subject were proper, then a law should be passed making it the duty of public boards of health to advertise gratuitously the names and addresses of all hospitals and all physicians who are willing to give advice or treatment for venereal disease.

SEX IGNORANCE AND INSANITY

Picque found a proportion of 88% of gynocological affections among the insane, and some have found even more. It is quite generally estimated that of all insanities 66% involve the sexual mechanism or functioning. Where sex is the primary cause of the ultimate derangement, sex-intelligence usually could wholly preclude the evil consequences, or find an early cure. In other cases, where there is some sexual derangement, it is at first but a symptom of mental ailment, only in turn to become an aggravating cause. Here a greater intelligence on the part of friends and family, such as the general dissemination of the literature of sexual science would produce, will enable them to understand what now seems dubious, and impel them to apply much earlier for medical aid, when it would be far more efficacious. So long as we penalize such literature as "obscene," the advertising sex-specialist is a necessity and serves a useful purpose. Until the members of the medical trust furnish adequate publicity on such subjects, the independent doctor should be encouraged to advertise.

SUFFERING OF THE VICIOUS TO SAFEGUARD VIRTUE

A study of venereal infection gives us some appalling results. Every year in our country perhaps hundreds of thousands of persons become its victims. Owing to public ignorance and a mawkish sentimentalism, many of these persons cannot secure treatment from the regular physician, nor will they be received in many hospitals. So long as this condition prevails advertising should be encouraged. It is argued that to make them suffer the penalty of vice is the

best safeguard to virtue. Even if the transgressors were the only sufferers, it would still be an unpardonable inhumanity not to cure them if possible, because in such cases they too often suffer in the inverse ratio of their familiarity with the vicious. More general education and publicity as to venereal infection and its cure conduces to more justice in fitting the natural punishment to the crime. All disease is the result of some form of vicious living, and if we are to be guided by such irrational aphorisms, we must abstain altogether from trying to relieve human suffering. The pains of dyspepsia or rheumatism must be endured lest by their cure we make vicious eating safe; dipsomania and delirium tremens must remain uncured lest we make alcoholic beverages safe. So also advertising such cures must be penalized in the interest of morality.

VENEREAL INFECTION AND SUFFERING OF THE INNOCENT⁵

When we come to consider the suffering which is unnecessarily inflicted on the ignorant and innocent, by adherence to this absurd dogma, then the public's indifference toward the cure of venereal diseases becomes almost criminal. It is not infrequent that a syphilitic child will infect its uninformed nurse, or an infected wet nurse, not knowing her own condition, transmits the disease to the child under her care. Unnumbered persons become infected merely by a common use of eating, drinking, or toilet utensils.

That you may properly understand just how infamous is the taboo which we have placed upon this subject, and which by this legislation it is proposed to extend, let me go more into detail, and here I charge you specially to observe the suffering of the innocent. Eighty per cent. of the blindness of the new born, and twenty per cent. of this terrible affliction from all causes, is due to gonococcus infection, as also is a large proportion of vulvo-vaginitis and joint-affections of children. Dr. Neisser estimates that at present there are in Germany about 30,000 blind persons who owe their affliction to this cause. In America no statistics are available, but probably the proportion is even greater here because here

⁵Practically all of this information about venereal infection is taken from "Social Diseases and Marriage" by Dr. Prince Morrow, and from the publications of the Am. Soc. for Sanitary and Moral Prophylaxis, of which he is President.

legalized prudery has already done more than in Germany to suppress venereal information.

Pinnard found that in 10,000 consecutive cases of miscarriage or abortions 42% were caused by syphilis; the remaining were due to all other causes combined. The mortality from hereditary syphilis ranges from 60 to 80%, while those who survive are affected with degenerative changes which unfit them for the battle of life. Syphilis in France alone, kills every year 20,000 children, equaling $7\frac{1}{2}\%$ of the mortality from all causes combined. It is computed that 50% of all gonorrheal women are absolutely sterile, and gonorrheally infected men are responsible for 20% of the involuntary sterile marriages. Sixty per cent. of the children born of syphilitic mothers die in utero, or soon after birth. Only two in five will survive even through a short life; 20 to 30% of gonorrheally infected women abort and from 45 to 50% are rendered irrevocably sterile.

Fournier's general statistics, embracing all classes of women, show that one in every five syphilitic women contracted syphilis from their husbands soon after marriage. Among the married females in his private practice, in 75% of the cases the disease was unmistakably traced to the husband. Dr. Bulkley's statistics, in "Syphilis in the Innocent," state that in private practice fully 50% of all females with syphilis, acquired it in a perfectly innocent manner, while in the married females 85% contracted it from their husbands. The report of a medical committee of seven gave it that in from 30 to 60% of the syphilitic women who had the disease it was communicated by the husband. Dr. Morrow in his experience in the New York Hospital found that 70% of the women who applied for treatment for syphilis were married and claimed to have received the disease from their husbands. 60% of all gynecologic surgical operations are chargeable to gonococcic infection.

To emphasize the danger which comes to the innocent from the infamous and ignorant conspiracy of silence, let me quote these awful words from a specialist of high authority. He says: "It may be a startling statement but nevertheless true, that there is more venereal infection among virtuous wives than among professional prostitutes in this country." The latter being the more intelligent in such matters use personal prophylaxis, and secure treatment earlier after infection,

while the ignorant virtuous wife continues to suffer in silence. In view of this appalling condition what are you going to say to the quack moralists who for fear of making vice safe, and to the members of the medical trust, who for selfish gain seek to penalize all honest and truthful announcement as to how, where or by whom venereal disease will be treated? Will you by education help protect the innocent sufferers or will you through moral cowardice give silent support to and extend the infamous taboo upon sexual information?

Expediency and the constitutional guarantee of freedom of the press forbid this legislation.

THEODORE SCHROEDER,
For The Free Speech League.